

**Statement of Hon. Colleen Kollar-Kotelly, Chairperson  
Commission on Judicial Disabilities and Tenure  
Before the Committee on the Judiciary & Public Safety  
FY22 - FY23 Performance Oversight Hearing February 15, 2023**

Madam Chairperson and Committee Members:

Thank you for the opportunity to present testimony concerning the activities and budget of the District of Columbia Commission on Judicial Disabilities and Tenure (“the Commission” or “CJDT”) for Fiscal Years 2022 and 2023. I am Judge Colleen Kollar-Kotelly. I am the Chairperson of the Commission.

**Overview of the Commission**

The Commission is an independent body created by federal statute with responsibility for oversight of judicial conduct of DC judges, as well as reappointments and senior judge fitness reviews. The Commission’s mission is to maintain public confidence in an independent, impartial, fair, and qualified judiciary and to enforce the high standards of conduct judges must adhere to both on and off the bench.

The Commission has seven members: One is appointed by the President of the United States, currently Mr. Thomas Fitton, who also is President of Judicial Watch. Two are appointed by the Board of Governors of the District of Columbia Bar, currently Hon. Diane Brenneman, Ret. and Ms. Amy Bess, Esq. Two are appointed by the Mayor of the District of Columbia, currently Mr. William P. Lightfoot, Esq. and Ms. Nikki Sertsu. One is appointed by the City Council of the District of Columbia, currently Dr. David P. Milzman, M.D.

I am the federal judiciary representative appointed by the Chief Judge of the United States District Court for the District of Columbia. Our newest member as of October 2022, Ms. Bess,

replaced our colleague and former Chairperson, Ms. Jeannine Sanford, who passed away last summer. The term of office of the President's appointee is five years. All others serve six-year terms. I was selected as the Chairperson in October 2021 after serving as Deputy Chairperson under Ms. Sanford. Diane Brenneman has served as Deputy Chairperson since 2021.

Until her recent retirement and for forty-seven (47) years, the Commission has been assisted in all areas of importance by an Executive Director. As it has done for decades to assure its independence, objectivity, and the high quality of its work, the Commission is advised on legal matters by an experienced outside Special Counsel. Amy Conway-Hatcher, Esq. has served in this role since 2019. She is a former prosecutor in the District of Columbia who has been in private practice for over twenty years handling sensitive corporate investigations, individual matters, as well as risk management and high-profile crisis management matters.

In my role as Chair, and previously as Vice Chair, I oversee and delegate responsibility for the Commission's day-to-day operations and routine business. As the Commission searches for a new Executive Director, I am assisted by the Vice Chairperson and Special Counsel, who coordinate with our D.C. agency partners to cover the full range of the Commission's operational needs. This includes our day-to-day work, and also the implementation of the Commission's "Modernization Project," a plan that originated with Ms. Sanford. In simple terms, this project involves a change from a paper-based system to a digital system, which will increase the Commission's ability to carry out its responsibilities more efficiently at the high standards we are duty bound to uphold.

### **The Commission's Jurisdiction**

The Commission's jurisdiction is limited by statute to Associate Judges and Senior Judges in D.C. Superior Court and the D.C. Court of Appeals in the following specific areas:

- (1) A judge's conduct warranting disciplinary action;

- (2) Involuntary retirement of a judge for reasons of health;
- (3) Evaluation of a judge who seeks reappointment at the end of his or her term; and
- (4) Review of a retiring judge who wishes to continue in the role of a senior judge.

The Commission is also required by law to collect, review, and maintain Annual Judicial Financial Statements and judicial timesheets. The Commission currently has jurisdiction and oversight responsibilities for over 110 DC judges.

### **Disciplinary Actions and Involuntary Retirement**

The Commission has the statutory authority to remove a judge for willful misconduct in office, for conduct prejudicial to the administration of justice, or which brings the judicial office into disrepute. The Commission also has the authority to retire involuntarily a judge if the Commission determines that the judge suffers from a mental or physical disability which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of his or her judicial duties. Under appropriate circumstances, the Commission may censure or reprimand a judge publicly or privately.

Complaints are filed through the Commission's website, by email, handwritten letter, and phone calls to the Commission office. The Commission also reviews complaints or other concerns that formally or informally come to its attention in other ways, such as through D.C. Bar Evaluations, media reports, or that are raised in other ways by a concerned individual or even the Court itself.

Under our current system, complaints received in any form by the Commission office or through Commissioners are provided to Special Counsel for review. Special Counsel's initial review of the complaint or concern is to determine if further information may be needed from the complainant, the court (such as docket sheets, hearing tapes, etc.), or other source to provide an initial assessment and recommendation to the Commission. If additional materials are needed, they are ordered and reviewed before the next Commission meeting.

Importantly, Special Counsel's early review of matters assures that serious complaints or concerns are escalated to Commission leadership and/or the full Commission early. While escalation of matters is not a common occurrence, in FY 2021 and FY 2022, complaints were escalated to the Commission related to four (4) separate serious matters. After escalation, each resulted in further investigation by Special Counsel, with direction, oversight and, as appropriate, participation of the Commission. In these situations, the Commission must sometimes act quickly to assure the public interest is served and, importantly, mitigate any potential harm to litigants or the community.

Complaints that do not require escalation are presented to the Commission at the next monthly meeting. After review, the Commission determines if further preliminary investigation is desired or advisable and, if so, it is directed accordingly.

By contrast, if the Commission has sufficient information to dispose of the case, it will dismiss and take no action where complaints are: (a) frivolous on their face, (b) not within its statutory jurisdiction, or which (c) even if true, do not allege matters that would constitute grounds for removal.

If a complaint requires further investigation, the scope will necessarily depend on the nature of the complaint and the specific circumstances alleged. The Commission and its Special Counsel adopt a tailored approach to each situation. Day-to-day, these matters are closely coordinated with Commission leadership and, as needed, with designated Commissioners and the full Commission, to assure that when results are reported, the full Commission is prepared to determine what action is appropriate based on evidence collected. Further, the Commission assures its review is thorough, and that the investigation and any resolution is handled with objectivity and independence.

I want to emphasize that all complaints are presented to and resolved by the full Commission. While the Special Counsel, and even the Executive Director, may provide input and advice, it is the Commission who makes the ultimate decision as to whether to dismiss the complaint or take disciplinary action, or to proceed to formal removal or involuntary retirement proceedings.

## **Judicial Reappointments and Judicial Recommendations**

The Commission has the responsibility to determine whether or not a sitting judge whose term is expiring and who seeks a new term is to be reappointed. The "Home Rule Act" requires that the Commission file with the President a written evaluation of the judicial candidate's performance during the term of office and his or her reappointment to another term. In its evaluation the Commission is required to place the judge in one of three categories.

- If the Commission evaluates a sitting judge, as "well qualified" the judge is automatically reappointed for a new term of fifteen years.
- If the Commission evaluates the Judge as "qualified" the President may, if he or she chooses, renominate the judge subject to Senate confirmation.
- If the Commission evaluates a judge as "unqualified," the judge is ineligible for reappointment.

The Retired Judge Service Act enlarged the Commission's jurisdiction and added the responsibility of recommending a judge for appointment as a senior judge subsequent to retirement. In these matters, the Commission is required to submit a written report of its findings to the appropriate Chief Judge and to make a recommendation concerning a judge's fitness and qualifications to continue judicial service. If the Commission makes an unfavorable recommendation, the requesting judge is ineligible for appointment. The recommendation of the Commission and the decision of the Chief Judge regarding appointment are final. A senior judge must be recommended for reappointment every four years, unless the judge has reached age seventy-four, in which case a recommendation and reappointment are required every two years.

## **Confidentiality of Commission Matters**

Much of the Commission's work and deliberations are confidential by statute and design. Confidentiality is critically important to the Commission's ability to achieve its mission. It not only protects complainants, concerned citizens, witnesses, and other sources from possible retaliation or other unfair criticism by the judge, it also protects judges and the integrity of the judicial process from complaints lacking in merit and jurisdiction. It further protects witnesses from retaliation or pressure from complainants, judges, other witnesses, or other sources.

Maintaining confidentiality is a careful balancing act that we, as a Commission, have a long-standing history of adhering to. Not only do we take seriously our statutory obligations, but we also want to assure the public and judiciary that information shared with the Commission to assist in sensitive matters will not be used or disclosed indiscriminately outside of strict statutory parameters.

I can attest personally to this Committee that the Commission's discretion in handling sensitive matters is sometimes *the only reason* it may hear of problems involving judges, especially, although not limited to, where medical issues or serious conduct issues are involved.

## **Commission's Relationship with the Court**

Before I touch on what was a busy year for the Commission, and certain serious matters the Commission handled, I want to share some positive words about the DC Courts. Overall, the DC Courts have a well-earned reputation for having one of the best Court systems in the country. Unlike other jurisdictions that have dealt with more serious, scandalous, and very public misconduct of judges, the District has not experienced that embarrassment. This is due in no small part to the work of the Commission who over the years has disciplined judges when appropriate and has ensured that only well-qualified Associate Judges were re-appointed and only well qualified Senior Judges were recommended for continued judicial service. Further, and while the Commission and judiciary have different roles and do not always agree on these matters, the Commission's proactive work with a

willing, engaged, and thoughtful Court leadership and individual judges who are open to reflection and improvement, also has contributed greatly to productive discussions that are critical to avoiding more serious issues or problems.

### **Commission Priorities in FY2022 and FY2023**

Last year, I testified before this Committee and shared the Commission's top priorities which included its core areas of responsibility and steps the Commission was taking to modernize the Commission's operations. I also asked the Committee for additional special funding to support technology upgrades and enhanced technology solutions to facilitate and streamline the Commission's work, including the digitization of files to aid in complex investigations.

#### **Modernization**

With your support and the funding committed by this Committee, I am pleased to report that our modernization projects are underway. We expect to complete the development and implementation of a software complaint tracking system in FY 2023. As we have shared with the Committee, given the age of the CJDT office's wiring and hardware, we expect further supplemental upgrades will be necessary in FY 2024 to support solutions implemented in FY 2023. I would like to personally thank the Committee, the Office of the Attorney General (OAG), the Office of the Chief Technology Officer (OCTO), the Office of the Chief Financial Officer (OCFO), and DC Department of Human Resources (DCHR), each of whom has played a pivotal role in these critically important Commission projects.

I have further added as a priority this year the hiring of a new Executive Director and one full-time staff member to assist in the Commission's day-to-day operations, both of whom will be expected to be facile with the technical solutions we have implemented. While the Commission had initiated a search for the Deputy position in FY 2022, the Executive Director's retirement moved the Commission in a new direction. It is our view that a combination of experienced permanent staff

and improved, more efficient operations are essential as the issues coming to the Commission's attention have become more frequent and complex.

While the modernization strategy was first discussed with the Committee last year in terms of technology and operations, the initial phases of this project were already in motion under the leadership of former Chairperson Sanford. Ms. Sanford began initiating changes a few years ago. The Commission has always been exceptionally well-served by highly skilled and reputable legal counsel, and, recent years, Ms. Sanford's - and the entire Commission's view - was that our complaint review and investigative process should be more formally documented and available for current and future Commissioners to review: (1) as precedent; (2) to spot trends in complaints or concerns that may indicate a lack of understanding or compliance with the Code of Judicial Conduct, and (3) to evaluate a particular judge's history over years or decades of service.

As mentioned above, the Commission also wanted to assure early escalation of significant complaints and increase its use of important District resources, including consultation on sensitive legal matters among our Special Counsel and our counsel in the OAG Legal Counsel Division. Over the last several years, Special Counsel has worked closely with leadership to achieve these objectives.

The next phase was the complaint tracking systems funded by the City Council this year to digitize our complaint and investigation process, as well as create a searchable database that, for example, can more efficiently store key complaint information, provide statistical data, and track trends, precedent, and a judge's history.

#### Complaints, Investigations, and Public Statements/Letters

The operational modernization efforts have not stopped the work of the Commission. Between 2020 and 2022, the Commission has reviewed over two hundred complaints and concerns, and it has conducted seven (7) more intensive investigations involving complex matters, which resulted in the following actions by the Commission: One (1) involuntary retirement in FY 2022, one



(1) public censure in FY 2021, three (3) public statements or letters in FY2021 and FY 2022, as well as non-public resolutions, private discussions, and, as appropriate, numerous informal discussions with judges and/or Court leadership.

In FY 2022 alone, the Commission reviewed and investigated over 70 complaints, each of which was evaluated first to assess whether the Commission had jurisdiction over the judge and/or the matter presented and, second, as warranted, to determine whether the allegations in the complaint had merit. Due to new procedures implemented by Commission leadership, the Commission's ability to respond to complaints more quickly within the first 30 days increased by 29% -- rising from 50% to a rate of 79%. Further, serious complaints are escalated as soon as they are identified. In FY 2023 to date, the Commission has already reviewed and investigated 36 complaints, 4 of which are pending.

Further, in FY 2022, despite significant restrictions on confidentiality, the Commission has worked hard to evaluate where meaningful information can legally be made public to address inquiries by the public or public concerns.

As Chair, I personally have reviewed questions in recent years with our Special Counsel and the OAG Legal Counsel Division. And, while we have confirmed the statute governing the Commission limits strictly what the Commission can legally say publicly and what the Commission can do once a judge has permanently retired, the Commission has found ways to alert the public, judges, and the Commission's other constituencies to matters of importance in certain instances.

Where possible and appropriate, the Commission's goal is to provide helpful information to the community that: (i) through awareness deters future misconduct or otherwise helps the judiciary avoid certain mistakes in the future, (ii) alerts the public to matters of significance within the Commission's jurisdiction, (iii) creates awareness of the Commission's processes, and (v) encourages the public to continue to bring issues of concern to the Commission's attention.

To give the Committee a better understanding of the nature and complexity of the

Commission's processes, limitations, and actions, one need look no further than FY 2022. Not only did the Commission complete an investigation that resulted in the formal uncontested involuntary removal of Judge Steven N. Berk, the Commission had other important investigations, some of which are not public, that required the type of nuanced, experience, and strategic skillset of our Special Counsel. The reason I can speak with such authority is because in each of these investigations, either as the Deputy Chairperson or the Chairperson, I personally oversaw the investigations and, in some instances, participated in interviews and other investigative meetings, as did several of my fellow Commissioners, Commission Staff, and other Commission representatives.

Even though the Commission is limited in what it can say by law, the Commission has gone to great lengths to publicly share certain information that it believes is informative, valuable, and serves the public interest.

- Public Statements: The Commission issued two public statements in FY 2022, on December 20, 2021 and April 18, 2022, that described its investigation in two separate matters. The statements also shared its observations on, for example: (i) undisclosed medical conditions that result in harmful delays to litigants and the resulting violation Rule 2.5 of the DC Code of Judicial Conduct; (ii) the potential obligations of lawyers and judges under Rules 2.14 and 2.15 of the DC Code of Judicial Conduct, to report disabilities and impairments of judges or violations of the Code of Conduct that call into question a judge's fitness to serve as a judge; and (iii) the Commission's determination regarding a judge who asked court staff to withhold information from the Commission. As part of these public statements, the Commission shared relevant information about the Commission's handling of complaints, its investigative processes, as they pertained to each case specifically, as well as particular areas for awareness or increased training.

See <https://cjdt.dc.gov/sites/default/files/dc/sites/cjdt/publication/attachments/berk2.pdf>;  
Public-Statement-Reappointment-Investigation-41922.pdf (dc.gov).

- Public Letters: In other instances, the Commission published a letter to DC Court leadership on matters of public concern that impact its work, such as:
  - o The recent February 6, 2023 letter to DC Superior Court Chief Judge Anita Josey-Herring regarding challenges with the DCSC new case management system, where the Commission's goal is to have proactive dialogue to address what could impact public access to the courts on a more systemic level -- and also lead to individual conduct complaints against judges. In this recent example, the Commission has asked for a full briefing on case management challenges and considerations for permanent solutions in March 2023. See Commission Letter to Chief Judge Anita Josey-Herring Re: DCSC Case Management System Challenges February 6, 2023 | cjdt.

The Commission will continue to look for opportunities, within the bounds of its statutory constraints, to support its core mission of maintaining public confidence in an independent, impartial, fair, and qualified judiciary and to enforce the high standards of conduct judges must adhere to.

#### Reappointments / Senior Judge Fitness Reviews

The Commission has made improvements to its reappointment and senior judge fitness evaluations. As I testified last year, the Commission is committed to conducting thorough and comprehensive reappointment and senior judge fitness evaluations. This year, the Commission implemented new procedures to increase the public's ability to comment on the reappointment and/or fitness review of judges. The Commission is doing this in three ways: (1) seeking judicial declarations for reappointment and additional senior terms sooner to allow for a longer public comment period and more time for individual Commissioners to conduct an appropriate investigation;

(2) expanding its public outreach to afford more and wider opportunities for institutional litigants, citizens in the community, and others to comment on a judge's track record, demeanor, etc.; and (3) formalizing documentation around these investigations to assure future Commissioners have easily accessible a full picture of a judge's history – whether positive, neutral, or negative.

In FY 2022, the Commission handled fifteen (15) senior judge fitness review and no reappointments. In FY 2023, the Commission expects to handle three (3) reappointments and six (6) senior judge fitness reviews.

#### Commission Rules and Related Improvements

The Commission will be updating its Rules later in FY 2023. While formal rules updates have yet to occur, that has not stopped the Commission from making progress in other ways.

For example, based on recent matters involving medical issues, including the Judge Berk matter, the Commission updated its Judicial Medical Forms and notifications to judges. These forms now require doctors to conduct basic neurological and cognitive screening as part of any certification regarding a judge's medical and mental fitness to serve as a judge.

#### Closing

Before I conclude, I want to make some brief remarks on the Judge Berk matter that was referenced in submitted testimony, as well as a few closing remarks.

While I understand certain concerns have been raised by a public witness, Ms. Shatzman, about her interactions with the Commission's investigation of her complaint and its resolution regarding now former Judge Berk, I – and the Commission - respectfully and categorically disagree with her characterizations made in her testimony.

Although I will not comment further on the details of the investigation beyond what the

Commission has shared, I will offer some observations that apply to any matter before the Commission. The Commission is fully dedicated and committed to assuring that all judges in the DC Courts within its jurisdiction uphold their ethical duties in all respects without exception. As shown by the Commission's track record, particularly in the last year, the Commission does not shy away from holding judges to account for violating their ethical responsibilities - or for failing to realistically face their own incapacities that may prevent them from executing their judicial tasks in a timely or effective way. It is the job we are tasked with.

That said, where the evidence does not support an allegation against a judge, or conflicts with other credible evidence, the Commission must do as the statute requires – it must dismiss the complaint without merit.

The job and oversight responsibility of the Commission and each Commissioner, as supported by its Staff and Special Counsel, is a difficult one. It is a responsibility that I - and all of my fellow Commissioners - take seriously. While we are always looking for ways to improve as demonstrated here and, in our submissions, we stand behind our decisions without reservation.

Thank you for the opportunity to present this testimony. I would be happy to answer any questions the Committee may have.